

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

ORDER

Application 27853 Permit 20178 License _____

**ORDER AMENDING PERMIT
BY ADDITION OF TERMS AND CONDITIONS
TO CONFORM WITH ORDER WR 96-002**

WHEREAS:

1. Permit 20178 was issued to Robert Skalli on November 20, 1987 pursuant to Application 27853 and was subsequently assigned to St. Supery Winery and Vineyard on May 22, 1990.
2. Permittee is a signatory to the March 10, 1995 Condition 12 Settlement Agreement (Agreement) between U.S. Bureau of Reclamation, Solano County Water Agency, and nearly all post-1945 appropriative water right holders in the Putah Creek watershed above Monticello Dam.
3. Order WR 96-002 was adopted by the State Water Resources Control Board on February 27, 1996.
4. Both the Agreement and the Order subject the permit to the following conditions.

NOW, THEREFORE, IT IS ORDERED THAT THE FOLLOWING CONDITIONS BE ADDED TO THE PERMIT:

Permittee shall comply with the following provisions which are derived from the Condition 12 Settlement Agreement dated March 10, 1995 (Agreement) pursuant to the Sacramento County Superior Court, Judicial Council Coordination Proceeding No. 2565:

(1) Permittee is hereby put on notice that the Sacramento County Superior Court, Judicial Council Coordination Proceeding No. 2565, has retained jurisdiction over the parties and, upon application by the watermaster, has the right to temporarily enjoin the diversion of water under this permit for noncompliance with the terms of the Agreement.

(2) Diversion of water under this permit shall be subject to the watermaster appointed by the court to enforce the terms of the Agreement. The permittee shall be responsible for partial payment of the watermaster costs in accordance with the terms of the Agreement.

(3) Within one year of the construction of the reservoir covered by this permit, permittee shall have the capacity of the reservoir surveyed by a registered civil engineer or licensed surveyor. A copy of the survey and area-capacity curve shall be provided to the watermaster and the SWRCB.

(4) Permittee shall install and properly maintain in the reservoir a staff gage, satisfactory to the watermaster and the SWRCB, for the purpose of determining water levels in the reservoir. Permittee shall record the staff gage readings on October 1 of each year and April 30 of the succeeding year, or such other period as may be specified by the watermaster with written notice to the permittee.

(4) Permittee shall maintain monthly records of diversion to offstream storage from October 1 of each year to April 30 of the succeeding year, or such other period as may be specified with written notice to the permittee by the watermaster.

(5) Permittee shall report to the watermaster annually, all diversions under this permit by September 1 of each year on forms approved by the watermaster.

(6) Permittee shall allow the watermaster reasonable access to the project covered by this permit to inspect measuring equipment and to observe compliance with these permit terms and conditions, upon 48-hour prior notice and upon such reasonable conditions as permittee may prescribe.

(7) Permittee is hereby put on notice that there may be years when diversion of water under this permit will not be within the reservation of water established for the Putah Creek watershed upstream of Monticello Dam, as set forth in the Agreement and that in those years no water may be available under this permit, and that releases of stored water may be required.

(8) Permittee is hereby put on notice that the waiver of priority granted by Reclamation and Solano County Water Agency provides that in the event Allowable Depletion is exceeded in any year, water diverted to storage that year shall be released and/or direct diversions shall be curtailed during the ensuing season(s), when applicable, to the extent necessary to bring the Allowable Depletion into compliance, in the following order:

a. All amounts directly diverted and/or diverted to storage by holders of Post-Reservation Water Rights in excess of 120 percent of that water right holder's previous five-year average, in reverse order of water right priority.

b. All amounts directly diverted and/or diverted to storage by holders of Post-Reservation Water Rights above the previous five-year average diversion, in reverse order of priority.

c. All remaining water directly diverted and/or diverted to storage that year by holders of Post-Reservation Water Rights in reverse order of priority.

(9) In any year in which Annual Depletion exceeds Allowable Depletion, if Lake Berryessa: (1) does not drop below 640,000 acre-feet in storage as of May 1, permittee shall have three years, starting in the next Accumulation Season, to make up or repay permittee's excess diversions; or (2) does not reach 640,000 acre-feet of storage as of May 1, permittee shall have one year, starting in the next Accumulation Season, to make up or repay permittee's excess diversions. In the event that Lake Berryessa spills at any time prior to full payback of excess depletion, permittee shall be excused from any further obligation for repayment of the overage.

(10) Permittee shall provide watermaster prior notice of any repayment. Repayment may be made either by releases from storage, curtailment of direct diversion, or by the provision of water from other sources.

(11) Permittee shall notify the watermaster of any change in ownership of land, changes in the water right, or changes in address related to the permit.

(12) Permittee is hereby put on notice of permittee's right, upon reasonable prior notice, to inspect and to copy, at permittee's own expense, all records and reports of the watermaster.

(13) Solely for purposes of administering Post-Reservation Depletion, the average annual depletion assigned to this project is included in Application 23872 as calculated by the watermaster using information described in Exhibit C of the Condition 12 Settlement Agreement. Permittee shall notify the watermaster of any change in crop type, acreage irrigated, and irrigation method. Any change in water usage which results in an increase in average annual depletion of more than 10 percent for non-weather related reasons, as determined by the watermaster, will require filing a new water right application. (Agreement pp. 13-15, Exhibit E)

Inclusion in the permit of certain provisions of this Agreement shall not be construed as disapproval of other provisions of the Agreement or as affecting the enforceability, as between the parties, of such other provisions insofar as they are not inconsistent with the terms of this permit.

(0000024)

The State Water Resources Control Board (SWRCB) shall have continuing authority under Article X, Section 2 of the California Constitution, Water Code Sections 100 and 275, and the common law public trust doctrine over this permit to delete, revise, amend, or adopt new terms or conditions to:

(1) implement the March 10, 1995, Condition 12 Settlement Agreement and any amendments to the agreement and (2) make the terms or conditions consistent with any order of the superior court. No action shall be taken pursuant to this paragraph unless the SWRCB provides notice to affected parties and provides an opportunity for a hearing.

(0000012)

Dated: **MARCH 9 1998**


for Edward C. Anton, Chief
Division of Water Rights

STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT 20178Application 27853 of Skalli CorporationP.O. Box 253, St. Helena, California 94574filed on August 29, 1983, has been approved by the State Water Resources Control Board SUBJECT TO VESTED RIGHTS and to the limitations and conditions of this Permit.

Permittee is hereby authorized to divert and use water as follows:

1. Source:

Tributary to:

(1) Maxwell CreekPope Creek thencePutah Creek thenceYolo Bypass(2) Unnamed StreamHarden Creek thence(3)-(8) Unnamed StreamsMaxwell Creek

2. Location of point of diversion:	40-acre subdivision of public land survey or projection thereof	Section	Town- ship	Range	Base and Meridian
SEE ADDENDUM					

County of Napa

*Projected

3. Purpose of use:	4. Place of use:	Section	Town- ship	Range	Base and Meridian	Acres
Frost Protection	S $\frac{1}{2}$	19	9N	4W	MD	70
		30	9N	4W	MD	130
	E $\frac{1}{2}$	23	9N	5W	MD	80
		24	9N	5W	MD	165
	N $\frac{1}{2}$	25	9N	5W	MD	150
	NE $\frac{1}{4}$ of NE $\frac{1}{4}$	26	9N	5W	MD	5
					Total	600

The place of use is shown on map filed with the State Water Resources Control Board.

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 10 cubic feet per second from point of diversion (1) and a total of 1 cubic foot per second from points of diversion (2) through (8) to be diverted from April 1 to May 31 of each year. The maximum amount diverted under this permit shall not exceed 1200 acre-feet per year.

(0000005)

6. The amount authorized for appropriation may be reduced in the license if investigation warrants.

(0000006)

7. Construction work shall begin within two years of the date of this permit and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked.

(0000007)

8. Construction work shall be completed by December 31, 1991.

(0000008)

9. Complete application of the water to the authorized use shall be made by December 31, 1998.

(0000009)

10. Progress reports shall be submitted promptly by permittee when requested by the State Water Resources Control Board until license is issued.

(0000010)

11. Permittee shall allow representatives of the State Water Resources Control Board and other parties as may be authorized from time to time by said Board, reasonable access to project works to determine compliance with the terms of this permit.

(0000011)

12. Pursuant to California Water Code Sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Resources Control Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

The continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to: (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the Board also may be exercised by imposing further limitations on the diversion and use of water by the permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest and is necessary to preserve or restore the uses protected by the public trust.

(0000012)

13. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Resources Control Board if, after notice to the permittee and an opportunity for hearing, the Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

(0000013)

14. The State Water Resources Control Board reserves jurisdiction to impose conditions to conform this permit to Board policy on use of water for frost protection. Action by the Board will be taken only after notice to interested parties and opportunity for hearing. (0000020)

15. During the season specified in this permit, the total quantity and rate of water diverted and used under this permit and under permittee's claimed existing rights for the place of use specified in this permit shall not exceed the quantity and rate of diversion and use, respectively, specified in this permit. If the permittee's claimed existing rights are quantified at some later date as a result of an adjudication or other legally binding proceeding, the quantity and rate of diversion and use allowed under this permit shall be the net of the face value of the permit less the amounts of water available under the existing rights.

Permittee shall forfeit all rights under this permit if permittee transfers all or any part of the claimed existing rights for the place of use covered by this permit to another place of use without the prior approval of the Board.

Permittee shall take and use water under the existing rights claimed by permittee only in accordance with law. (0000021)

16. For the protection of fish and wildlife, permittee shall bypass a minimum of 2.5 cubic feet per second from April 1 through May 31. The total streamflow shall be bypassed whenever it is less than the designated amount. (0140060)

17. No water shall be diverted under this permit until permittee has installed a device, satisfactory to the State Water Resources Control Board, which is capable of measuring the bypass flow required by the conditions of this permit. Said measuring device shall be properly maintained. (0060062)

18. In accordance with Section 1603, of the Fish and Game Code, no water shall be diverted under this permit until the Department of Fish and Game has determined that measures necessary to protect fishlife have been incorporated into the plans and construction of the diversion works. Construction, operation, and maintenance costs of any required facility are the responsibility of the permittee. (0000063)

19. Permittee is hereby put on notice that there may be years when diversion of water under this permit will not be within the reservation of water established for the watershed upstream from Lake Berryessa in Decision 869. During the portion of such years that, in the absence of permittee's diversion, hydraulic continuity would exist between the permittee's diversion point and Lake Berryessa, permittee shall not make any diversion and shall allow all stream-flow at his diversion works to pass undiminished to the downstream channel, unless replacement water is provided on an exchange basis. Nothing in this condition, however, shall preclude permittee from diverting water under any prior right. (0220086)

20. The maximum simultaneous rate of diversion from Maxwell Creek under this permit, together with that under the permits issued pursuant to Applications 23834 and 27852, shall not exceed 10 cubic feet per second. (0000114)

21. The archeological sites identified as CA-NAP-226 and CA-NAP-525 in "An Archeological Survey of the Skalli Corporation Vineyard in Pope Valley Pertinent to the Division of Water Rights Application #27852 and #27853, September 1984 by Jay M. Flaherty" shall not be impacted by any of the developments proposed in this project. No subsurface or surface disturbance of these sites shall occur from the water diversion, storage and distribution facilities or the installation and maintenance of vineyards. (0380500)

22. Prior to making a request for license, or before license action will be considered by the State Water Resources Control Board, permittee shall consult with the Division of Water Rights and perform an irrigation system evaluation. A report on the evaluation shall be prepared by a person trained or experienced in irrigation system design and management, and submitted to the Board for approval.

All cost-effective water conservation measures identified in the irrigation system evaluation report shall be implemented prior to issuance of a license. (000029C)

5/22/91 Asgd to St. Supery Vineyards & Winery;

This permit is issued and permittee takes it subject to the following provisions of the Water Code:

Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Dated:

NOVEMBER 20 1987

STATE WATER RESOURCES CONTROL BOARD

Raymond Walsh
for Chief, Division of Water Rights